

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**JOINT REPORT OF MOVANTS AD HOC GROUP OF GENERAL OBLIGATION
BONDHOLDERS, AMBAC ASSURANCE CORPORATION, ASSURED GUARANTY
CORP., ASSURED GUARANTY MUNICIPAL CORP., THE MUTUAL FUND GROUP,
AND NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION AND
RESPONDENTS FEDERAL OVERSIGHT AND MANAGEMENT BOARD FOR
PUERTO RICO AND PUERTO RICO FISCAL AGENCY AND FINANCIAL
ADVISORY AUTHORITY WITH RESPECT TO
ORDER AUTHORIZING RULE 2004 EXAMINATION**

¹ The Debtors in these Title III cases (collectively, the “Title III Cases”), along with each Debtor’s respective Title III Case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III Case numbers are listed as bankruptcy case numbers due to software limitations).

To the Honorable United States Magistrate Judge Judith Gail Dein:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), and the Commonwealth of Puerto Rico (the “Commonwealth”), by and through the Oversight Board as the Commonwealth’s representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF” and together with the Oversight Board and the Commonwealth, the “Respondents”), and Movants the Ad Hoc Group of General Obligation Bondholders (the “GO Bondholders”), Ambac Assurance Corporation (“Ambac”), Assured Guaranty Corp. and Assured Guaranty Municipal Corp. (together, “Assured”), the Mutual Fund Group (“MFG”), and National Public Finance Guarantee Corporation (“National”)³ respectfully submit this joint report in response to the Court’s December 15, 2017 Order Allowing Movants’ Motion for An Order Authorizing Rule 2004 Examination (“December 15 Order”) [ECF No. 2033].

On November 28, 2017 Movants filed an Urgent Renewed Joint Motion For Order Authorizing Rule 2004 Examination (“Renewed Motion”) [ECF No. 1870]. The Renewed Motion sought production of 17 categories of documents. The December 15 Order allows the Renewed Motion as to those 17 categories of documents, subject to limitations on use of certain of those documents and also subject to objections of Respondents. The December 15 Order requests that the Parties submit certain additional information regarding the use of those documents and a process for resolving Respondents’ specific objections.

I. Pursuant to Paragraph 2 of the December 15 Order, the Parties report as follows:

a. Areas of Agreement. The Parties agree that, subject to the entry of a protective

² PROMESA has been codified in 48 U.S.C. §§ 2101–2241.

³ The Movants and Respondents are collectively referred to as the “Parties.”

order, data or factual information produced in the data room will be produced or deemed produced pursuant to the 2004 Requests and the December 15 Order. This includes information responsive to Requests Nos. 1 through 7, 11, 14, and 15. Movants may attempt to use such produced information in the Title III or adversary proceedings and Respondents reserve and do not waive any objection to such future use. (See Dec. 14, 2017 Transcript at 25, 36) Respondents will provide Movants with a schedule of materials in the data room that they in good faith determine to be data or factual information within the meaning of this paragraph.

The Parties further agree that, subject to the entry of a protective order, Respondents will re-produce to Movants any documents that have been or will be produced by Respondents in response to discovery requests in the Title III proceedings or any adversary proceeding. These documents have been made available in folder 1.2.1 “Prior Productions” in the data room. Those documents will be produced or deemed produced pursuant to the December 15 Order. This includes information responsive to Requests Nos. 9, 10 and 13. Movants may attempt to use such produced information in the Title III or adversary proceedings as they deem appropriate, and Respondents reserve and do not waive any evidentiary objection to such future use. (See Dec. 14, 2017 Transcript at 25, 36-37)

The Parties further agree that materials that have been provided in response to requests made in mediation that are identified by Respondents as such shall not be used outside the context of mediation. They agree, however, that if Movants believe that any data or factual information contained in such mediation materials should be produced, they will notify Respondents and, if Respondents agree, the Parties will work cooperatively to develop a format for production of any factual information that is appropriate to be produced. (See Dec. 14, 2017 Tr. at 25-26, 37-38)

b. Areas of Disagreement. The Parties disagree with respect to production of information related to the prior and ongoing development of fiscal plans, including formula and assumptions underlying those plans and communications between and among Respondents and Respondents' respective officials, employees, consultants and representatives. ("Fiscal Plan Development Materials"). This includes information responsive to Requests 8, 16 and 17.

(i) Movants' position is that, subject to the entry of a protective order, Fiscal Plan Development Materials should be produced pursuant to the December 15 Order or logged categorically in the format described in Paragraph I.c, below. Movants also contend that in addition to the categories described in Paragraph I.c, below, Respondents should log the number of documents in each category being withheld. Respondents disagree with these positions and contentions and reserve all rights.

(ii) Respondents' position is that they are not required to produce Fiscal Plan Development Materials pursuant to Rule 2004, or otherwise and should not be required to undertake the substantial burden of compiling and cataloging such Fiscal Plan Development Materials for the sole purpose of creating a privilege log. Movants disagree with these positions and contentions and reserve all rights.

To resolve this dispute, the parties propose that (1) Movants file a brief of no more than 10 pages in support of their position by January 5, 2018, (2) Respondents file a brief of no more than 10 pages in support of their position by January 19, 2018, and (3) Movants file a reply by January 26, 2018, with the Court holding a hearing, if necessary, as soon thereafter as practicable.

c. Privilege Log Format. Subject to the Court's disposition of the matters of disagreement set forth in I.b. above, and to the extent that Respondents are required to prepare a

privilege log, the parties agree to the following format: Respondents shall provide a categorical privilege log listing (1) the basis for withholding each category of documents; (2) a sufficient description of the subject matter of the category of documents to permit Movants to evaluate the claim of privilege; (3) the date range for the set of documents in each category; and (4) an aggregate list of all persons sending and receiving documents in each category.

II. Pursuant to Paragraph 3 of the December 15 Order, the Parties report as follows:

The Parties propose that subject to the Court's disposition of the dispute regarding Fiscal Plan Development Materials referred to in paragraph I.b., above, to the extent Respondents withhold documents on the basis of any properly preserved objection, Respondents shall notify Movants and produce a categorical privilege log, as appropriate, by 21 days after the Court issues an order on the dispute referred to in paragraph I.b., above. The parties shall meet and confer regarding such objection(s) by 7 days following the production of the privilege log and, if unable to resolve their disagreement, shall provide a joint report to the Court by 7 days following the meet and confer, describing the dispute and stating Movants' and Respondents' respective positions, with the Court holding a hearing, if necessary, as soon thereafter as practicable.

Dated: December 22, 2017
San Juan, Puerto Rico

Respectfully submitted.

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